

ASSEMBLY, No. 4877

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED OCTOBER 26, 2020

Sponsored by:

Assemblyman WILLIAM F. MOEN, JR.

District 5 (Camden and Gloucester)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

SYNOPSIS

Provides economic development incentives for remediating and redeveloping legacy landfills, brownfields, and contaminated sites.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/26/2020)

1 AN ACT concerning economic development incentives for
2 remediating and redeveloping legacy landfills, brownfields, and
3 contaminated sites, and supplementing P.L.1974, c.80 (C.34:1B-
4 1 et seq.).

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. P.L. , c. (C.) (pending before the Legislature as this
10 bill) shall be known and may be cited as the “Landfills,
11 Brownfields, and Contaminated Sites Redevelopment Incentive
12 Program Act.”

13
14 2. As used in P.L. , c. (C.) (pending before the
15 Legislature as this bill):

16 "Authority" means the New Jersey Economic Development
17 Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

18 "Benefit" or "benefits" mean any tax benefit or benefits provided
19 pursuant to sections 7 through 9 of P.L. , c. (C.) (pending
20 before the Legislature as this bill) to which a developer becomes
21 eligible by entering into a redevelopment agreement.

22 "Board" means the Board of the New Jersey Economic
23 Development Authority, established pursuant to section 4 of
24 P.L.1974, c.80 (C.34:1B-4).

25 "Brownfield site" means the same as that term is defined in
26 section 23 of P.L.1993, c.139 (C.58:10B-1).

27 "Building services" means any cleaning or routine building
28 maintenance work, including but not limited to sweeping,
29 vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse
30 or trash, window cleaning, securing, patrolling, or other work in
31 connection with the care or securing of an existing building,
32 including services typically provided by a door-attendant or
33 concierge. “Building services” shall not include any skilled
34 maintenance work, professional services, or other public work for
35 which a contractor is required to pay the “prevailing wage” as
36 defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

37 "Contaminated site" means any real property on which there is
38 contamination.

39 "Contamination" or "contaminant" mean the same as those terms
40 are defined in section 23 of P.L.1993, c.139 (C.58:10B-1).

41 “Closure” means all activities associated with the design,
42 purchase, construction, or maintenance of all measures required by
43 the department, pursuant to law, in order to prevent, minimize, or
44 monitor pollution or health hazards resulting from a legacy landfill
45 subsequent to the termination of operations at any portion thereof,
46 including, but not necessarily limited to, the placement of final

1 earthen or vegetative cover, the installation of methane gas vents or
2 monitors and leachate monitoring wells or collection systems, and
3 long-term operations and maintenance, at the site of any legacy
4 landfill that is not listed on the National Priorities List pursuant to
5 the "Comprehensive Environmental Response, Compensation, and
6 Liability Act of 1980," 42 U.S.C. s.9605.

7 "Department" means the Department of Environmental
8 Protection.

9 "Developer" means any person that enters or proposes to enter
10 into a redevelopment agreement with the authority pursuant to the
11 provisions of P.L. , c. (C.) (pending before the Legislature
12 as this bill).

13 "Director" means the Director of the Division of Taxation in the
14 Department of the Treasury.

15 "Legacy landfill" means the same as that term is defined in
16 section 1 of P.L.2013, c.69 (C.13:1E-125.1).

17 "Program" means the Landfills, Brownfields, and Contaminated
18 Sites Redevelopment Incentive Program established by section 3 of
19 P.L. , c. (C.) (pending before the Legislature as this bill).

20 "Redevelopment agreement" means an agreement entered into
21 between the authority and a developer pursuant to
22 P.L. , c. (C.) (pending before the Legislature as this bill)
23 under which the developer agrees to perform any work or
24 undertaking necessary for the closure and remediation of a legacy
25 landfill, or for the remediation of a brownfield site or contaminated
26 site, and for the completion of a redevelopment project on the area
27 of land whereon the legacy landfill, brownfield site, or
28 contaminated site is located.

29 "Redevelopment project" means a specific construction project
30 or improvement that is undertaken, pursuant to the terms of a
31 redevelopment agreement, by a developer within an area of land
32 whereon a legacy landfill, brownfield site, or contaminated site is
33 located, and that is appropriate and safe for the site and complies
34 with the provisions of P.L.1993, c.139 (C.58:10B-1 et al.). A
35 redevelopment project may involve construction or improvement
36 upon lands, buildings, improvements, or real and personal property,
37 or any interest therein, including lands under water, riparian rights,
38 space rights, and air rights, acquired, owned, developed or
39 redeveloped, constructed, reconstructed, rehabilitated, or improved.

40 "Redevelopment zone" means an area determined to be in need
41 of redevelopment on or before the effective date of this act pursuant
42 to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-
43 6), as made pursuant to the authority of Article VIII, Section III,
44 paragraph 1 of the Constitution. A redevelopment zone may include
45 lands, buildings, or improvements which of themselves are not
46 detrimental to the public health, safety or welfare, but the inclusion

1 of which is found necessary, with or without change in their
2 condition, for the effective redevelopment of the area of which they
3 are a part.

4 "Remediation" or "remediate" means the same as those terms are
5 defined in section 23 of P.L.1993, c.139 (C.58:10B-1).

6 "Remediation costs" means all reasonable costs associated with
7 the remediation of a contaminated site, except any costs incurred in
8 financing the remediation.

9
10 3. The Landfills, Brownfields, and Contaminated Sites
11 Redevelopment Incentive Program is established as a program
12 under the jurisdiction of the New Jersey Economic Development
13 Authority. The purpose of the program is to provide economic
14 incentives for developers who remediate and properly close a
15 legacy landfill, or remediate a brownfield site or contaminated site,
16 as appropriate, and undertake a redevelopment project on the
17 premises of a closed landfill, brownfield site, or contaminated site
18 within a redevelopment zone. As provided in section 7 of
19 P.L. , c. (C.) (pending before the Legislature as this bill),
20 developers that are approved to participate in the program are
21 entitled to an exemption to the extent of 50 percent from the tax
22 imposed under the "Sales and Use Tax Act," P.L.1966, c.30
23 (C.54:32B-1 et seq.). In addition, as provided in section 8 of
24 P.L. , c. (C.) (pending before the Legislature as this bill),
25 receipts from retail sales of certain tangible personal property and
26 sales of certain services to developers for the exclusive use or
27 consumption of the developers are exempt from the taxes imposed
28 under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-
29 1 et seq.). As provided in section 9 of P.L. , c. (C.)
30 (pending before the Legislature as this bill), retail sales of energy
31 and utility service to a developer or group of developers who meet
32 certain requirements are exempt from the taxes imposed under the
33 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

34
35 4. a. The authority shall develop an application, review, and
36 approval process for a developer to participate in the program. The
37 authority shall review and approve up to five applications for
38 participation in the program over a period of not more than five
39 years. Following approval of an application by the board, but prior
40 to the start of any remediation or redevelopment at the site of the
41 redevelopment project, the authority shall enter into a
42 redevelopment agreement with the developer. The chief executive
43 officer of the authority shall negotiate the terms and conditions of
44 the redevelopment agreement on behalf of the State.

45 b. The developer shall complete the remediation and
46 redevelopment of the proposed site by a date no later than seven

1 years after the date on which the authority and the developer
2 execute the redevelopment agreement. The authority may grant a
3 developer one additional period of not more than three years to
4 complete the redevelopment project if the developer demonstrates,
5 and the authority finds, that the benefits received under the program
6 are continuing to assist in the redevelopment of the site, and that, if
7 the benefits are no longer provided, the developer will be unable to
8 continue making progress in the redevelopment of the site. The
9 developer shall submit a progress report to the authority and to the
10 department every six months pursuant to section 10 of
11 P.L. , c. (C.) (pending before the Legislature as this bill).

12 c. The authority shall not enter into a redevelopment agreement
13 with a developer unless:

14 (1) the redevelopment project complies with standards
15 established by the authority in accordance with the green building
16 manual prepared by the Commissioner of Community Affairs
17 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6),
18 regarding the use of renewable energy, energy-efficient technology,
19 and non-renewable resources to reduce environmental degradation
20 and encourage long-term cost reduction;

21 (2) the redevelopment project complies with the authority's
22 affirmative action requirements, adopted pursuant to section 4 of
23 P.L.1979, c.303 (C.34:1B-5.4);

24 (3) the developer pays each worker employed to perform
25 remediation work or construction work at the redevelopment project
26 not less than the prevailing wage rate for the worker's craft or trade,
27 as determined by the Commissioner of Labor and Workforce
28 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
29 and P.L.2005, c.379 (C.34:11-56.58 et seq.);

30 (4) each worker employed to perform building services work at
31 the redevelopment project, for 10 years following completion of the
32 remediation work at the redevelopment project, shall be paid not
33 less than the prevailing wage rate for the worker's craft or trade, as
34 determined by the Commissioner of Labor and Workforce
35 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
36 and P.L.2005, c.379 (C.34:11-56.58 et seq.); and

37 (5) the developer complies with all applicable laws, rules, and
38 regulations for the closure and remediation of a legacy landfill or
39 for the remediation of a brownfield or contaminated site.

40 d. The authority shall not enter into a redevelopment agreement
41 with a developer who is the owner or operator of an industrial
42 establishment subject to the provisions of P.L.1983, c.330
43 (C.13:1K-6 et al.), the discharger of a hazardous substance or a
44 person in any way responsible for a hazardous substance pursuant to
45 the provisions of subsection c. of section 8 of P.L.1976, c.141
46 (C.58:10-23.11g), or the owner or operator of an underground

1 storage tank regulated pursuant to the provisions of P.L.1986, c.102
2 (C.58:10A-21 et seq.), that has discharged a hazardous substance at
3 the closed landfill, brownfield site, or contaminated site proposed to
4 be in the redevelopment agreement.

5 e. The redevelopment agreement shall provide that issuance of
6 any benefit under the program shall be conditioned upon the
7 subrogation to the department of all rights of the developer to
8 recover remediation costs from any other person who discharged a
9 hazardous substance or is in any way responsible, pursuant to
10 section 8 of P.L.1976, c.141 (C.58:10-23.11g), for a hazardous
11 substance that was discharged at the legacy landfill, brownfield site,
12 or contaminated site.

13 f. Nothing in P.L. , c. (C.) (pending before the
14 Legislature as this bill) shall be construed to alter any remediation
15 requirement or timeframe established pursuant to P.L.1993, c.139
16 (C.58:10B-1 et al.), P.L.1976, c.141 (C.58:10-23.11 et seq.),
17 P.L.2009, c.60 (C.58:10C-1 et seq.), or any other law.

18

19 5. The redevelopment agreement shall include, but shall not be
20 limited to, the following:

21 a. A detailed description of the redevelopment project;

22 b. The economic and other benefits to be received by the
23 developer, the State, and the local community in which the
24 redevelopment project is located, from entering into the
25 redevelopment agreement;

26 c. A requirement that the developer submit a progress report to
27 the authority and to the department every six months;

28 d. A requirement that the developer report to the authority and
29 the division quarterly any sales tax paid by the developer during the
30 fiscal quarter;

31 e. A provision which permits the authority to amend the
32 redevelopment agreement;

33 f. A requirement that the developer enter into a memorandum
34 of agreement or oversight document with the department to perform
35 and complete a closure and remediation, as appropriate, and the
36 date on which the developer shall complete the closure,
37 remediation, and redevelopment, which shall be no later than seven
38 years after the date on which the authority and the developer
39 execute the redevelopment agreement, unless this time frame is
40 extended by the authority pursuant to subsection b. of section 4 of
41 P.L. , c. (C.) (pending before the Legislature as this bill);

42 g. A provision which permits the authority to recapture all or
43 part of the value of any benefits awarded, at its discretion, if the
44 developer does not comply with any of provisions of the
45 redevelopment agreement; and

1 h. A provision requiring the developer to certify the truth of the
2 information provided to the authority and the division, under
3 penalty of perjury, and establishing the conditions under which the
4 redevelopment agreement may be terminated.

5
6 6. To qualify for a benefit under the program, a developer, after
7 executing a redevelopment agreement with the authority, shall enter
8 into a memorandum of agreement or oversight document with the
9 Commissioner of Environmental Protection for the proper closure
10 and remediation of the legacy landfill, or the remediation of the
11 brownfield site or contaminated site, as appropriate. Under the
12 memorandum of agreement or oversight document, the developer
13 shall agree to perform and complete any action necessary for the
14 closure and remediation of the legacy landfill, or for the
15 remediation of the brownfield site or contaminated site, as may be
16 required by the department pursuant to law, rule, or regulation.

17
18 7. A developer that undertakes a redevelopment project in a
19 redevelopment zone pursuant to a redevelopment agreement shall
20 be entitled to an exemption to the extent of 50 percent from the tax
21 imposed under the "Sales and Use Tax Act," P.L.1966, c.30
22 (C.54:32B-1 et seq.). The exemption granted pursuant to this
23 section shall be effective for the duration of the remediation and
24 redevelopment project, as specified in the redevelopment
25 agreement, as may be extended by the authority.

26
27 8. a. Receipts from retail sales of tangible personal property,
28 except motor vehicles and energy, and sales of services, except
29 telecommunications services and utility services, to a developer that
30 undertakes a redevelopment project in a redevelopment zone
31 pursuant to a redevelopment agreement for the exclusive use or
32 consumption of the developer for the purposes of the redevelopment
33 project are exempt from the taxes imposed under the "Sales and Use
34 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

35 b. (1) Notwithstanding the provisions of section 20 of
36 P.L.1966, c.30 (C.54:32B-20) and the provisions of R.S.54:49-14,
37 the director shall refund to a developer the amount of any sales tax
38 or any use tax paid by the developer in connection with that
39 developer's purchase of tangible personal property or services that
40 are exempt, pursuant to subsection a. of this section, from the taxes
41 imposed by P.L.1966, c.30 (C.54:32B-1 et seq.) if the developer
42 makes and files a claim for refund with the director within one year
43 of the date the payment of tax for purchase is made.

44 (2) A developer shall make and file a claim for refund,
45 accompanied by auditable receipts and other necessary
46 documentation, as the director may prescribe.

1 c. The exemption granted pursuant to this section shall be
2 effective for the duration of the remediation and redevelopment
3 project, as specified in the redevelopment agreement, as may be
4 extended by the authority.

5
6 9. a. Retail sales of energy and utility service to:

7 (1) a developer that undertakes a redevelopment project in a
8 redevelopment zone pursuant to a redevelopment agreement and
9 that employs at least 250 people within the redevelopment zone, at
10 least 50 percent of whom are directly employed in a manufacturing
11 process, for the exclusive use or consumption of the developer
12 within the redevelopment zone, or

13 (2) a group of two or more persons: (a) each of whom is a
14 developer that undertakes a redevelopment project in a
15 redevelopment zone pursuant to a redevelopment agreement; (b)
16 that collectively employ at least 250 people within a redevelopment
17 zone, at least 50 percent of whom are directly employed in a
18 manufacturing process; (c) that are each engaged in a vertically
19 integrated business, evidenced by the manufacture and distribution
20 of a product or family of products that, when taken together, are
21 primarily used, packaged, and sold as a single product; and (d) that
22 collectively use the energy and utility service within the
23 redevelopment zone; are exempt from the taxes imposed under the
24 “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.).

25 A developer will continue to be subject to applicable Board of
26 Public Utilities tariff regulations except that the developer’s bills
27 from utility companies and third party suppliers for energy and
28 utility service shall not include charges for sales and use tax.

29 b. A developer that meets the requirements of subsection a. of
30 this section shall not be allowed the exemption granted pursuant to
31 this section until it has complied with the requirements for
32 obtaining the exemption as may be provided pursuant to
33 P.L. , c. (C.) (pending before the Legislature as this bill)
34 and P.L.1966, c.30 (C.54:32B-1 et seq.). The authority shall
35 provide prompt notice to the President of the Board of Public
36 Utilities and to the Director of the Division of Taxation in the
37 Department of the Treasury, of a developer that has qualified for the
38 exemption under this subsection, and shall provide the president
39 and the director an annual list of all developers that qualify.

40 c. The exemption granted pursuant to this section shall be
41 effective for the duration of the remediation and redevelopment
42 project, as specified in the redevelopment agreement, as may be
43 extended by the authority.

44
45 10. a. No later than six months after the date on which the
46 authority and a developer execute a redevelopment agreement, and

1 every six months thereafter until completion of the redevelopment
2 project, the developer shall submit an update on the status of the
3 redevelopment project to the authority and to the department,
4 including the remediation and closure costs incurred by the
5 developer for the remediation and closure of the legacy landfill, or
6 for the remediation of the brownfield site or contaminated site, as
7 applicable. Unless the authority determines that extenuating
8 circumstances exist, the authority's approval of any benefit under
9 the program shall expire if the authority, the department, or both, do
10 not timely receive the status update required under this subsection.
11 The authority may rescind an award of any benefit under the
12 program if a redevelopment project fails to advance in accordance
13 with the redevelopment agreement.

14 b. The director may require a developer to submit any
15 information that the director deems necessary to effectuate the
16 provisions of P.L. , c. (C.) (pending before the Legislature
17 as this bill).

18 c. The authority may audit, or cause to be audited, at any time,
19 any developer receiving benefits under the program.

20 d. No later than one year after the effective date of this act,
21 and every year thereafter, the authority shall prepare a report on the
22 implementation, use, and benefits of the program, and submit the
23 report to the Governor, and, pursuant to section 2 of P.L.1991,
24 c.164 (C.52:14-19.1), to the Legislature.

25
26 11. a. The chief executive officer of the authority, in
27 consultation with the Commissioner of Environmental Protection,
28 shall promulgate rules and regulations in accordance with the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
30 1 et seq.), as the chief executive officer deems necessary to
31 administer the provisions of P.L. , c. (C.) (pending before
32 the Legislature as this bill). The rules and regulations shall include
33 provisions as necessary to implement the Landfills, Brownfields,
34 and Contaminated Sites Redevelopment Incentive Program,
35 including requirements for the retention, collection, and
36 determination of taxes and tax withholdings by developers and for
37 the regular reporting of information by developers to the authority
38 and the division. The rules may provide for the recipients of
39 benefits under the program to be charged an initial application fee,
40 and ongoing service fees, to cover the administrative costs related
41 to the program.

42 b. The Director of the Division of Taxation in the Department
43 of the Treasury shall promulgate rules and regulations in
44 accordance with the "Administrative Procedure Act," P.L.1968,
45 c.410 (C.52:14B-1 et seq.), as the director deems necessary to
46 administer the provisions of P.L. , c. (C.) (pending before

1 the Legislature as this bill). The rules and regulations shall include
2 provisions as necessary to collect and analyze information from
3 each developer that receives benefits under the program, to allow
4 the division to reconcile any sales tax savings incurred by the
5 developer from participation in the program with data on New
6 Jersey sales tax expenditures. The Director of the Division of
7 Taxation is also authorized to promulgate any additional rules
8 necessary to effectuate the tax related provisions of the Landfills,
9 Brownfields, and Contaminated Sites Redevelopment Incentive
10 Program.

11

12 12. This act shall take effect immediately.

13

14

15

STATEMENT

16

17 This bill establishes the Landfills, Brownfields, and
18 Contaminated Sites Redevelopment Incentive Program (program),
19 to be administered by the New Jersey Economic Development
20 Authority (EDA), in consultation with the Department of
21 Environmental Protection (DEP). The program is to provide
22 economic incentives for developers who undertake redevelopment
23 projects on the premises of legacy landfills, brownfield sites, or
24 contaminated sites within redevelopment zones.

25 As provided in the bill, developers that are approved to
26 participate in the program are entitled to an exemption to the extent
27 of 50 percent from the tax imposed under the "Sales and Use Tax
28 Act," P.L.1966, c.30 (C.54:32B-1 et seq.). In addition, receipts
29 from retail sales of certain tangible personal property and sales of
30 certain services to a developer for the exclusive use or consumption
31 of the developer is to be exempt from the taxes imposed under the
32 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.). As
33 provided in the bill, retail sales of energy and utility service to a
34 developer or group of developers who meet certain requirements is
35 to be exempt from the taxes imposed under the "Sales and Use Tax
36 Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

37 The EDA is required to develop an application, review, and
38 approval process for a developer to participate in the program. The
39 EDA is to review and approve up to five applications for
40 participation in the program over a period of not more than five
41 years. Following approval of an application by the board of the
42 EDA, but prior to the start of any remediation or redevelopment at
43 the site of the redevelopment project, the EDA is to enter into a
44 redevelopment agreement with the developer. The chief executive
45 officer of the EDA is required to negotiate the terms and conditions
46 of the redevelopment agreement on behalf of the State.

1 The developer is required to complete the remediation and
2 redevelopment by a date no later than seven years after the date on
3 which the EDA and the developer execute the redevelopment
4 agreement. The developer may be eligible for an additional period
5 of not more than three years to complete the redevelopment project
6 if the developer demonstrates, and the EDA finds, that the benefits
7 received under the program are continuing to assist in the
8 redevelopment of the site, and that if the benefits are no longer
9 provided the developer would be unable to continue making
10 progress in the redevelopment of the site.

11 Under the bill, a developer that enters into a redevelopment
12 agreement with the EDA is required to comply with certain
13 environmental standards, green building standards, and labor and
14 workforce requirements.

15 No later than six months after the date the EDA and a developer
16 execute a redevelopment agreement, and every six months
17 thereafter until completion of the project, the developer is required
18 to submit an update of the status of the redevelopment project to the
19 EDA and to the DEP, including the closure and remediation costs
20 incurred by the developer. Unless the EDA determines that
21 extenuating circumstances exist, the EDA's approval of any benefit
22 under the program are required to expire if the EDA, the DEP, or
23 both, do not timely receive this status update. The EDA may
24 rescind an award of any benefit under the program if a
25 redevelopment project fails to advance in accordance with the
26 redevelopment agreement.

27 Under the bill, the EDA may audit, or cause to be audited, at any
28 time, any developer receiving benefits under the program. In
29 addition, the EDA, in consultation with the Director of the Division
30 of Taxation in the Department of the Treasury, may, until the
31 completion of the redevelopment project, require a developer to
32 provide additional information relevant to the administration of the
33 program and to analyze and report on the program's use and
34 benefits.

35 Beginning one year after the effective date of the bill, and every
36 year thereafter, the EDA is required to prepare a report on the
37 implementation, use, and benefits of the program, and submit the
38 report to the Governor and the Legislature.